

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

NOTICE OF RULEMAKING

**Workers' Compensation – Qualified Medical Evaluator Regulations
(Title 8, California Code of Regulations sections 100, 104, 105, 106)**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation (hereafter "Administrative Director"), proposes to amend regulations to implement the provisions of Labor Code sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, regarding the appointment and reappointment of Qualified Medical Evaluators (QME) and the procedures for obtaining QME medical-legal evaluations, that are used to resolve disputes in the workers' compensation system. This action is taken pursuant to the authority vested in the Administrative Director by Labor Code sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

When adopted, the proposed regulations will constitute title 8, California Code of Regulations, Division 1, Chapter 1, Article 10, sections 100 and 104, and Article 10.5, sections 105 and 106. The regulations implement, interpret and make specific the manner in which the Administrative Director will exercise the authority under Labor Code sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, regarding the appointment and reappointment of Qualified Medical Evaluators and the procedures concerning medical evaluations.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to amend Articles 10 and 10.5 of Division 1, Chapter 1, of Title 8, California Code of Regulations, sections 100, 104, 105, and 106 (QME Forms 100, 104, 105, and 106).

Amended Section 100	The Application for Appointment as Qualified Medical Evaluator Form
Amended Section 104	The Reappointment Application as Qualified Medical Evaluator Form
Amended Section 105	The Request for Qualified Medical Evaluator Panel—Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney)
Amended Section 106	The Request for Qualified Medical Evaluator Panel—Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case)

PUBLIC HEARING

A public hearing has been scheduled in Oakland to permit all interested persons the opportunity to present statements or argument, either orally or in writing, about the subjects noted above. The hearings will be held at the following time and place:

Date: August 9, 2011

Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business

**Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612**

The state office buildings and their auditoriums are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Shavonda Early, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone with an opportunity to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 P.M., on August 9, 2011. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to

comments presented at the hearing and to other written comments received by 5 P.M. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 P.M. on August 9, 2011.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code section 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

Reference is made to sections 139.2, 4060, 4061, 4062, 4062.1, and 4062.2, Labor Code; section 1798 et seq., Civil Code; and sections 6250 et seq., Government Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Senate Bill 228 [Stats. 2003, ch. 639 (SB 228) (Alarcon)], among other things, repealed Labor Code section 139, thereby eliminating the Industrial Medical Council ("IMC"), and amended Labor Code section 139.2 to transfer all authority to the Administrative Director of the Division of Workers' Compensation to regulate (examine, appoint, reappoint, and discipline) physicians who are Qualified Medical Evaluators.

Senate Bill 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], among other things, amended the Labor Code in a manner that changed both what Qualified Medical Evaluators must use in evaluating whether medical treatment is reasonable and necessary, the nature and extent of permanent impairment and permanent disability and the procedures for obtaining an evaluator in represented cases with a date of injury on or after January 1, 2005.

California employers are required by existing law to provide and pay for reasonable and necessary medical treatment costs and medical-legal expenses as part of the workers' compensation system. (Lab. Code §§ 3600, 4600.) In contested cases, the injured workers are entitled to a comprehensive medical-legal evaluation performed by Agreed Medical Evaluators (AME) or Qualified Medical Evaluators (QME). The medical-legal reports issued by these physicians are used by injured workers and employers to resolve disputes over medical issues and other benefits in workers' compensation claims. (Lab. Code §§ 4060, 4061, 4062, 4062.1, 4062.2, 4067; Cal. Code Regs., tit. 8 § 9737(c).)

The Administrative Director is required by Labor Code sections 4062.1 and 4062.2 to issue panels (lists of 3 QME names) to the parties in a workers' compensation case who need a comprehensive medical-legal evaluation report from a QME to resolve disputed benefit issues in the case. The QMEs listed must be selected randomly. (Lab. Code § 139.2(h)(1); Cal. Code Regs., tit. 8 § 31(a).) The party holding the legal right to submit the panel request form also has the right to designate the specialty of the QMEs for the panel. (Lab. Code §§ 4062.1(b), 4062.2(b).)

The Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3. (Cal. Code Regs., tit. 8 § 12.) Labor Code section 3209.3 defines physicians as "includ[ing] physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law." Effective April 15, 2010, California Code of Regulations, title 16, section 311.1 provides, in relevant part, that "... the Board of Chiropractic Examiners recognizes ... those specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA)."

Labor Code section 139.2(b)(4)(A) provides that the Administrative Director is required to appoint or reappoint a doctor of chiropractic to a QME chiropractic specialty if he or she: "(A) Has completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the Administrative Director, the Board of Chiropractic Examiners and the Council on Chiropractic Education." Moreover, to issue a panel in a selected specialty, there has to be at least five (5) active QMEs in the specialty at the time the panel selection is requested. In the event less than five (5) QMEs are active in a requested specialty, the Medical Director is required to contact the party who holds the legal right to designate the specialty for an alternate specialty selection. (Cal. Code Regs., tit. 8 § 31(d).)

The Administrative Director of the Division of Workers' Compensation proposes to amend forms used in the QME regulations regarding the appointment and reappointment of QMEs and the procedures for obtaining QME medical-legal evaluations that are used to resolve disputes in the workers' compensation system. Specifically, the

Administrative proposes to amend QME Forms 100, 104, 105 and 106 to include specialties for doctors of chiropractic approved by the Board of Chiropractic Examiners.

The proposed regulations implement, interpret, and make specific Labor Code sections 100, 104, 105, and 106, as follows:

Article 10. QME Application Forms (§§ 100 and 104)

1. Section 100—The Application for Appointment as Qualified Medical Evaluator Form

QME Form 100 is the Application for Appointment as Qualified Medical Evaluator form. QME Form 100, at page 6, contains the QME Medical Doctor (MD) / Doctor of Osteopathy (DO) list of Specialty Codes and the Non-MD / DO Specialty Codes. This form is amended at page 6 to add the following QME specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopaedic
DCS Chiropractic Sports Medicine

This change is made because the Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3 (Cal. Code Regs., tit. 8 § 12), and Labor Code section 3209.3 includes chiropractic practitioners in the definition of physicians. Moreover, by regulation effective April 15, 2010 (Cal. Code of Regs., tit. 16 § 311.1), the Board of Chiropractic Examiners has recognized specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA). Thus, the list of QME Specialty Codes as presented in QME Form 100, page 6, is amended to add the specialty codes set forth above.

QME Form 100 is further amended at page 2, Block 3, to delete the word “Residency” in the last box and to substitute it with the word “Fellowship.” This change is a non-substantive typographical error correction.

2. Section 104—The Reappointment Application as Qualified Medical Evaluator Form

QME Form 104 is the Reappointment Application as Qualified Medical Evaluator Form. QME Form 104, at page 5, contains the QME Medical Doctor (MD) / Doctor of Osteopathy (DO) list of Specialty Codes and the Non-MD / DO Specialty Codes. This form is amended at page 5 to add the following QME specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopaedic
DCS Chiropractic Sports Medicine

This change is made because the Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3 (Cal. Code Regs., tit. 8 § 12), and Labor Code section 3209.3 includes chiropractic practitioners in the definition of physicians. Moreover, by regulation effective April 15, 2010 (Cal. Code of Regs., tit. 16 § 311.1), the Board of Chiropractic Examiners has recognized specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA). Thus, the list of QME Specialty Codes as presented in QME Form 104, page 5, is amended to add the specialty codes set forth above.

Article 10.5. QME Process Forms (§§ 105 and 106)

3. Section 105—The Request for Qualified Medical Evaluator Panel—Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney)

QME Form 105 is the Request for Qualified Medical Evaluator Panel—Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney). QME Form 105, at page 3, contains the QME Medical Doctor (MD) / Doctor of Osteopathy (DO) list of Specialty Codes and the Non-MD / DO Specialty Codes. This form is amended at page 3 to add the following QME specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopaedic
DCS Chiropractic Sports Medicine

This change is made because the Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3 (Cal. Code Regs., tit. 8 § 12), and Labor Code section 3209.3 includes chiropractic practitioners in the definition of physicians. Moreover, by regulation effective April 15, 2010 (Cal. Code of Regs., tit. 16 § 311.1), the Board of Chiropractic Examiners has recognized specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA). Thus, the list of QME Specialty Codes as presented in QME Form 105, page 3, is amended to add the specialty codes set forth above.

This form is further amended at page 3 to correct the specialty codes for medical doctors (MD)/doctors of osteopathy (DO). The specialty code MMO is amended to delete the

language “Orthopaedic Surgery Internal Medicine or Radiology,” and substitute it with the language “conditions related to tumors, cancer.”

This change will eliminate a current problem which causes delays in parties getting the correct specialty. Non-physicians mistakenly select MMO because the descriptor of the specialty contains the word “orthopaedic.” It has been discovered that the non-physician party really means to select an orthopaedic specialty. Orthopaedic specialties are covered by other specialty codes such as MOS-Orthopaedic Surgery (*other than Spine and Hand*), MNB-Spine, or MHH-Hand.

QME Form 105 is further amended on a non-substantive basis for clarification purposes and to facilitate data input. At page 1, under “Specialty Requested,” the phrase “Use of 3 letter code only” is moved on top to state “3 letter code required.” At page 1, under “Reason QME Panel is being requested,” new language is added to state “Read attachment ‘How to Request a QME’ before the phrase “check one box only,” and the punctuation has been corrected in that paragraph. At page 1, under “Answer each question below;,” the boxes and corresponding words “yes, no,” and the phrase “If yes:” have been inserted as they were missing due to clerical error. At the end of page 2, before the last paragraph, the signature line has been corrected to state Signature of “Requestor” and the phrase “Injured Employee” has been deleted. Further information which appears in the front of the form has been repeated to state: “Requesting party check one only:” and boxes have been inserted with the following words next to them: “Injured Worker,” “Claims Administrator,” and “Defense Attorney.”

4. Section 106—The Request for Qualified Medical Evaluator Panel—Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case)

QME Form 106 is the Request for Qualified Medical Evaluator Panel—Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case). QME Form 106, at page 3, contains the QME Medical Doctor (MD) / Doctor of Osteopathy (DO) list of Specialty Codes and the Non-MD / DO Specialty Codes. This form is amended at page 3 to add the following QME specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopaedic
DCS Chiropractic Sports Medicine

This change is made because the Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3 (Cal. Code Regs., tit. 8 § 12), and Labor Code section 3209.3 includes chiropractic practitioners in the definition of physicians. Moreover, by regulation effective April 15, 2010 (Cal. Code of Regs., tit. 16 § 311.1), the Board of Chiropractic Examiners has

recognized specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA). Thus, the list of QME Specialty Codes as presented in QME Form 106, page 3, is amended to add the specialty codes set forth above.

Form 106 is also amended at page 3 to correct the specialty codes for medical doctors (MD)/doctors of osteopathy (DO). The specialty code MMO is amended to delete the language “Orthopaedic Surgery Internal Medicine or Radiology,” and substitute it with the language “conditions related to tumors, cancer.”

This change will eliminate a current problem which causes delays in parties getting the correct specialty. Non-physicians mistakenly select MMO because the descriptor of the specialty contains the word “orthopaedic.” It has been discovered that the non-physician party really means to select an orthopaedic specialty. Orthopaedic specialties are covered by other specialty codes such as MOS-Orthopaedic Surgery (*other than Spine and Hand*), MNB-Spine, or MHH-Hand.

Form 106 is further amended at pages 1 and 2 for non-substantive reasons. The paragraphs in the form at pages 1 and 2 are reorganized. The various paragraphs have been moved to allow more effective use of the form. The substantive information contained in the form has not been changed.

Form 106 is also amended for non-substantive reasons at page 1, under “Answer each question below;” the boxes and corresponding words “yes, no,” and the phrase “If yes:” have been inserted as they were missing due to clerical error. The punctuation is also corrected in that paragraph to delete the question mark.

DISCLOSURES REGARDING THIS PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- **Determination regarding whether this rulemaking imposes a Local Mandate:**

None is imposed by these proposed regulations because no new program or higher level of service to the public is required. The regulations provide minor changes in the forms related to the technical details on procedures used to regulate Qualified Medical Evaluators (‘QMEs’) and the procedures for obtaining reports from QMEs, and impose the same requirements on all employers in California. Local government and districts as employers, like all other employers in California, are already required by law to have workers’ compensation coverage, or otherwise to self administer or contract for another entity to administer the workers’ compensation claims of their employees and to conform to the Labor Code in using the medical dispute resolution procedures involving QMEs and AMEs.

- **Significant statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** None.
- **Effect on Housing Costs:** None
- **Cost Impacts Incurred By Private Persons or Businesses:** The Administrative Director has determined that the proposed regulations will not have any significant cost impact on private persons or businesses.
- **Other impacts on Jobs and Businesses:** The Administrative Director has determined that the changes proposed in this rulemaking will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses in the State of California.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that this rulemaking will not have any significant impact on small business.

Physicians appointed as Qualified Medical Evaluators fall within the definition of small business, and already are required by existing law to comply with the statutes and regulations governing Qualified Medical Evaluators (QMEs). The Administrative Director is required to issue panels listing three Qualified Medical Evaluators when requested by a party to resolve a disputed issue (Lab. Code §§ 139.2(h), 4062.1, 4062.2, and 139.2(h)(3).) The cost of this medical-legal evaluation, like any other medical-legal expense, would be covered by the employer's workers' compensation insurance or approved system for self insurance as part of the workers' compensation system.

FISCAL IMPACTS

- **Costs or savings to state agencies or costs/savings in federal funding to the State:** None
- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of division 4 of the Government Code:** None (See Local Mandate bullet above)
- **Other nondiscretionary costs/savings imposed upon local agencies:** None (See Local Mandate bullet above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Administrative Director's attention, would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, than the proposed action of this rulemaking.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public review and comment for at least ten days through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking comments and the Form 399. Also included are the documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Qualified Medical Evaluator Regulations link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the

proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the Regulations Coordinator.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Minerva Krohn
Counsel
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mkrohn@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 100. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.